

incorporated herein, and which may be obtained by writing to the Division of State Fire Marshal, 200 East Gaines Street, Tallahassee, Florida 32399-0340, or by visiting the State Fire Marshal's website located at <http://www.fldfs.com/SFM/index.htm>. The first seven applications submitted meeting the geographic and experience requirements shall be appointed as members. The next seven applications meeting the geographic and experience requirements shall be appointed alternate members. Applications may be submitted at any time and will be kept on file to fill vacancies as they occur. The existing alternate will be appointed to serve in the vacant seat. An alternate will be chosen for the seat in the same manner as the original member was chosen.

(d) No change.

(e) Requests for non-binding interpretations of the Code shall be submitted to the Division in accordance with this rule, along with a fee of one hundred ten (\$110.00) dollars, as directed at the Division of State Fire Marshal website and shall include the following:

1. through 4. No change.

(f) through (j) No change.

(k) A meeting shall be held to consider the request at the behest of at least two FCIC members. The meeting may be conducted in person or electronically. Each informal interpretation rendered may be supported by a meeting in person, or by telephone, teleconference, video conference, or such other means that the organization deems appropriate. The organization may permit interactive communication among the FCIC, the requesting party, the authority having jurisdiction and any other person or entity deemed appropriate.

(l)1. Each member participating in an informal interpretation shall submit his or her individual response within five (5) calendar days of having received the written request, along with a fee of one hundred ten (\$110) dollars. The Organization upon receipt of a response from a simple majority of the FCIC members, shall should forward the majority FCIC response, either Yes or No, without comment or amendment to the requestor via electronic transmission mail (email), if available and, if not available, by facsimile transmission or regular mail within four (4) 14 calendar days of receipt of the majority responses from the individual FCIC members question. In no event shall the FCIC response be sent later than thirty 30 days from the date the Organization receives the request for informal interpretation.

2. If a response will not or cannot for any reason be sent to the requestor within 14 calendar days of receipt, the requestor shall be so notified by email, if available and, if not available, by facsimile transmission or regular mail. Such response shall be provided thereafter as soon as reasonably practicable, but not later than 30 days after submission of the request.

2.3. The Organization shall send an electronic copy of each final FCIC response. Each response shall also be sent via email to the Division of State Fire Marshal at the email address in the contract.

(m) Each final FCIC response, along with the written request, shall be posted on the organization's website.

(n) Each response is nonbinding, and constitutes is the opinion of the FCIC rendering members the opinion same or a majority of the members of such FCIC, and not the opinion of the Department, the State Fire Marshal or the Organization; and shall create no legal right on the part of any person nor any legal duty on the part of the FCIC, the organization, any individual, the State Fire Marshal, the State of Florida, or any other person or entity.

(3)(a) No change.

(b) Each person serving on the FCIC shall serve at the pleasure of the State Fire Marshal ~~or the organization and no person has any recourse against the State Fire Marshal or the organization for removal from the FCIC except as otherwise provided by federal or state law.~~

Specific Authority 633.01, 633.026 FS. Law Implemented 633.026 FS. History--New \_\_\_\_\_.

## Section IV Emergency Rules

### BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

### DEPARTMENT OF FINANCIAL SERVICES

#### Division of Insurance Agents and Agency Services

RULE NO.:	RULE TITLE:
69BER07-2	Requirements Relating to Public Adjusting

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The Department of Financial Services hereby states the following circumstances constitute an immediate danger to the public health, safety, and welfare: This emergency rule is necessitated by a storm system (reportedly with tornadic activity) which passed through Florida in the

early morning hours of February 1, 2007. This storm system (with its reported tornadic activity) caused a number of fatalities and widespread property and infrastructure damage in a number of Florida counties. Because of this hazardous weather system (and possible tornadic activity), Governor Charlie Crist declared a State of Emergency exists in Lake, Seminole, Sumter, and Volusia Counties, Florida (Executive Order Number 07-21).

Excessive adjusting fees are a source of injury to the public health, safety, and welfare by substantially impairing the financial ability of insureds to effectuate repairs to damaged property in a timely fashion, to commence or complete repairs, or to make proper and adequate repairs meeting building code requirements. In order for complete rebuilding to occur, insurance proceeds cannot be eroded by unreasonable public adjuster fees. As a result, there is a need to limit the fees imposed by public adjusters to a reasonable level. The rule prohibits public adjusters from collecting a fee based upon policy limits where the subject property has been declared a total loss by the insurer, unless that public adjuster was involved in negotiating a dispute as to whether that property was a total loss.

The rule provision relating to time necessary to rescind a contract is reasonable and necessary based on the department's experience with public adjuster abuses after prior hazardous weather systems (such as the hurricanes of 2004-2005) have impacted Florida.

The Legislature recognized, in Section 626.8698, F.S., that the interest of the public demands that public adjusters be prohibited from "soliciting or otherwise taking advantage of a person who is vulnerable, emotional or otherwise upset as a result of trauma, accident or similar occurrence..." This hazardous weather system (with possible tornadic activity) has placed a great number of people in a state of vulnerability. The emotional stress of claimants may lead them to make imprudent decisions in the context of contracting with public adjusters.

In consideration of the emergency conditions currently existing, and given the Department's responsibility to protect the public interest, including insureds, and implement the Insurance Code, an emergency rule is necessary.

**REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES:** The Department of Financial Services believes that adopting an emergency rule is the fairest method to protect the public because the nature of the destruction and loss of life caused by this hazardous weather system (with possible tornadic activity), including power outages and disruption of communication and transportation, requires an immediate response. The conditions from this hazardous weather system (with possible tornadic activity) will require the Department to exercise its authority to provide protection to consumers from unethical conduct of certain public adjusters. The provisions of this rule provide

needed guidance to public adjusters. A Department bulletin addressed to all licensed public insurance adjusters would reach them, but would not be legally binding. A permanent rule would not have the flexibility and immediacy to protect the public welfare.

**SUMMARY:** This emergency rule adopts emergency ethical standards to be applied to claims resulting from this hazardous weather system (with possible tornadic activity) in the counties wherein Governor Crist declared a State of Emergency via Executive Order 07-21 (Lake, Seminole, Sumter, and Volusia). The rule establishes a 14-day rescission period for public adjuster contracts. Additionally, the rule prohibits public adjusters from collecting a fee based upon policy limits where the subject property has been declared a total loss by the insurer, unless that public adjuster was involved in negotiating a dispute as to whether that property was a total loss.

**THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS:** Barry Lanier, Chief, Bureau of Investigation, Division of Agent and Agency Services, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0333, phone (850)413-5601

**THE FULL TEXT OF THE EMERGENCY RULE IS:**

69BER07-02 Requirements Relating to Public Adjusting.

(1) General Provisions.

(a) This emergency rule provides additional requirements and ethical standards to protect insureds located in those counties declared to be in a State of Emergency by Governor Charlie Crist in Executive Order 07-21 (Lake, Seminole, Sumter, and Volusia Counties), who were affected by a hazardous weather system (with possible tornadic activity) which struck the State of Florida early February 2, 2007.

(b) The provisions of this emergency rule are intended to supplement the requirements for conduct of public adjusting and ethical requirements placed on public adjusting as set forth in Rules 69B-220.051 and 69B-220.201, Florida Administrative Code. These provisions are intended to provide needed guidance to public adjusters and assure ethical public adjusting claims practices under the specific circumstances caused by the impact of the hazardous weather system (with possible tornadic activity) which struck the State of Florida early February 2, 2007.

(c) This rule applies only to losses in those counties (Lake, Seminole, Sumter, and Volusia) that are in a State of Emergency pursuant to Executive Order 07-21 and occurring as a result of the hazardous weather system (with possible tornadic activity) which struck the State of Florida early February 2, 2007.

(d) This rule applies for ninety (90) days from the date filed with the Secretary of State, Bureau of Administrative Code.

(e) The provisions of this rule are ethical requirements binding upon public adjusters, in addition to those requirements established in Rule Chapter 69B-220, Florida Administrative Code.

(2) Definitions.

(a) "Public Adjuster" is defined for purposes of this rule as defined in Section 626.854, Florida Statutes.

(b) "Public Adjusting" is the activity described in Section 626.854, Florida Statutes.

(3) General Ethical Requirements. Public Adjusters shall adhere to the following requirements:

(a)1. A public adjuster's contract with a client shall be revocable or cancelable by the insured or claimant, without penalty or obligation, for fourteen (14) business days after the contract is entered into.

2. The public adjuster shall disclose to the insured that the insured has the right to cancel with prompt notice within the revocation period.

3. If the insured elects to cancel the contract, prompt notice shall be provided to the public adjuster within fourteen (14) days after the contract is entered into. For purposes of this section, if said notice is provided via mail delivery, a valid postmark made within the fourteen (14) day rescission period shall serve as adequate notice.

4. Nothing in this provision shall be construed to prevent an insured from pursuing any civil remedy after the fourteen (14) day cancellation period.

(4) Total Loss Claims. No public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value based on payment of the policy limits for total loss of any residential building, structure, mobile home as defined in Section 320.01(2), Florida Statutes, or manufactured building as defined in Section 553.36(12), Florida Statutes, in accordance with the valued policy law as set forth in Section 627.702, Florida Statutes, unless the adjuster was involved in negotiating a dispute between the parties as to whether the property was a total loss.

Specific Authority 120.54(4), 624.308, 626.878 FS. Law Implemented 624.307, 626.611, 626.621, 626.8698, 626.878, 626.9541(1)(i) FS. History--New 2-9-07.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: February 9, 2007

## Section V Petitions and Dispositions Regarding Rule Variance or Waiver

### DEPARTMENT OF EDUCATION

NOTICE IS HEREBY GIVEN that on February 8, 2007, the Department of Education has issued an order.

The Emergency Petition for Temporary Variance from or Waiver of paragraphs 6A-6.03315(1)(c), (d), F.A.C., is denied as the petition does not identify specific facts constituting an emergency situation. The petition will be reviewed on a non-emergency basis as set forth in Section 120.542, Florida Statutes.

A copy of the Order may be obtained by contacting: Office of the Agency Clerk, 325 West Gaines Street, Room 1514, Tallahassee, Florida 32399-0400, (850)245-9661.

### DEPARTMENT OF COMMUNITY AFFAIRS

NOTICE IS HEREBY GIVEN that the Petition for Waiver from the City of Frostproof, DCA06-WAI-271. is deemed approved by virtue of ninety (90) days having passed since the Petition was received by the Department on October 20, 2006. The petitioner sought a permanent waiver of paragraph 9B-43.0051(7)(b), Florida Administrative Code, which imposes a non-performance penalty of five (5) points for every low and moderate income household not served by sewer hookup and septic tank abandonment under the City's 2004 Community Development Block Grant subgrant.

A copy of the Petition, which has been assigned the number DCA06-WAI-271, may be obtained by writing: Paula P. Ford, Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

### DEPARTMENT OF LAW ENFORCEMENT

NOTICE IS HEREBY GIVEN that on February 1, 2007, the Florida Department of Law Enforcement has issued an order.

The Department of Law Enforcement, Criminal Justice Standards and Training Commission has taken action at its February 1, 2007, meeting on a petition for waiver received from Mary Carr, on January 8, 2007. Notice of receipt of this petition was published in the issue Vol. 33, No. 4, January 26, 2007, F.A.W. No public comment was received. Petitioner has petitioned for a waiver of paragraph 11B-30.006(1)(d), F.A.C., pursuant to Section 120.542, F.S. Petitioner has requested that the Department waive the requirement that she be permitted to become certified despite having completed the SOCE prior to completing training. On February 1, 2007, the Criminal Justice Standards and Training Commission granted a waiver of this rule to Mary Carr, in a final order, OGC File No.: VAR 07-2. This rule waiver was granted because the petitioner demonstrated that a strict application of the rule would result in